Affirmed and Memorandum Opinion filed June 3, 2025.

In The

Fourteenth Court of Appeals

NO. 14-23-00728-CV

HARRY LANDRY, JR., Appellant

V.

SHEMEIKA SCROGGINS, Appellee

On Appeal from the 400th District Court
Fort Bend County, Texas
Trial Court Cause No. 23-DCV-302526

M E M O R A N D U M O P I N I O N

Appellant/defendant Harry Landry, Jr. appeals the trial court's final judgment granting the summary-judgment motion of appellee/plaintiff Shemeika Scroggins, ordering the partition and sale of certain real property, awarding her attorney's fees, and appointing a receiver for the sale of the property. Concluding that Landry has not shown that the trial court erred, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

This case involves disputes regarding certain real property located at 3134 Prosperity South Drive (formerly Confederate South Drive), Missouri City, Texas 77459 (the "Property"). In March 2020, the presiding judge of the 505th District Court of Fort Bend, County signed an agreed, final divorce decree in cause number 19-DCV-267988 (the "First Case"), dissolving the marriage between Harry Landry, Jr. and Shemeika Landry, n/k/a Shemeika Scroggins ("Divorce Decree"). The court found that the Property was community property and divided it by awarding a 50% separate property interest to each party so that they remained tenants in common. The Divorce Decree did not provide for the partition or sale of the Property.

In May 2020, Scroggins filed suit against Landry in cause number 20-DCV-273254 in the 505th District Court of Fort Bend, County ("Second Lawsuit"), asking the court to order a sale of the Property and to partition the proceeds of the sale between Landry and Scroggins according to their respective interests. Scroggins also sought to recover attorney's fees, expenses, and interest. In June 2021 the Second Lawsuit was consolidated into the First Case and given the First Case's cause number. After a bench trial in the Second Lawsuit, the court signed an order finding that Landry and Scroggins are co-tenants and sole owners of the Property, and that the Property is not susceptible to partition in kind (the "Order"). The court ordered that (1) the Property be listed for sale by June 1, 2022, (2) the parties take all steps and execute any documents necessary to facilitate the listing and sale, and (3) the proceeds be used to pay any encumbrances on the Property and then split by the parties "50/50." The court did not rule on Scroggins's request for attorney's fees, expenses, and interest.

Despite the Order, the parties did not sell the property by June 1, 2022. On

June 24, 2022, Scroggins filed an "Emergency Motion for Relief Following Partition Order and Request for Sanctions" in the First Case cause number ("Motion for Relief"), alleging that Landry was preventing the Property from being listed and shown to potential buyers and preventing the sale of the Property from closing by destroying the home, threatening the realtors, and refusing to cooperate. Scroggins alleged that she had accepted an offer to purchase the Property but that the sale could not close unless Landry vacated the home and signed the closing documents. Scroggins alleged that absent court intervention the Property would not be sold as the court had ordered. In October 2022, Scroggins filed in the First Case cause number a petition for enforcement of the Order ("Petition for Enforcement"), asking the court to hold Landry in contempt of court for his failure to comply with the Order.

In March 2023, Scroggins filed suit against Landry in the trial court below in Cause Number 23-DCV-302526 (the "Third Lawsuit"). Scroggins filed an amended petition seeking a partition of the Property under chapter 23 of the Texas Property Code and under the Texas Rules of Civil Procedure. *See* Tex. Prop. Code Ann. §23.001, *et seq*. (West, Westlaw through 2023 4th C.S.). In the alterative Scroggins asserted a claim against Landry to quiet title to the Property and a claim for a declaratory judgment that Landry's claim to Scroggins's 50% interest in the Property is invalid and void. In this same lawsuit Scroggins filed an application for the appointment of a receiver with the power to take possession of the Property, sell it, and distribute the net proceeds to the parties.

In June 2023 Scroggins filed a motion for summary judgment asserting that the summary-judgment evidence proves as a matter of law that Scroggins is entitled to a partition of the Property and that Landry's affirmative defenses fail and do not preclude summary judgment. Scroggins stated that the trial court in the

First Case did not finally adjudicate all matters. Scroggins claimed that res judicata and collateral estoppel fail as affirmative defenses because there is no prior final judgment on the merits by a court of competent jurisdiction. Scroggins argued that she was entitled to a declaration that Landry's claim to Scroggins's 50% interest in the Property is invalid and void. Scroggins asserted that she was entitled to summary judgment on all of Landry's affirmative defenses, that she was entitled to a judgment ordering the partition and sale of the Property, appointing a receiver for the sale of the Property, and awarding Scroggins attorney's fees and costs.

In his response in opposition to Scroggins's summary-judgment motion, Landry submitted as evidence filings from various cases relating to the Property as well as a letter from his lawyer to Scoggins's lawyer asking that Scroggins non-suit with prejudice her claims in the Third Lawsuit because, according to Landry's lawyer, the claims have no legal basis in light of the Order. Landry asserted that Scroggins's claims are barred by res judicata based on "multiple prior proceedings for which there are final judgments on the merits." Landry contended that res judicata applied because in the Order the court granted Scroggins the same relief she is seeking in the Third Lawsuit. Landry also asserted that Scroggins's claims are barred by collateral estoppel because she has unsuccessfully raised the same issues in multiple prior proceedings. Landry relied in part on what he said was the adverse ruling of the court on Scroggins's Petition for Enforcement.

The day before the oral hearing on Scroggins's summary-judgment motion, each party's lawyer filed a letter brief with the trial court. In her brief Landry's lawyer asserted that res judicata does not bar one ex-spouse from suing another ex-spouse for a partition of real property that was not partitioned in the final divorce decree. Landry's lawyer also stated that Landry's res judicata argument is not based on the Divorce Decree but on the Order, which Landry asserted is a final

order. At oral argument Scroggins's lawyer asserted that Scroggins had tried to enforce the Order in the 505th District Court but that the court thought that its plenary power had expired and that it lacked jurisdiction in the matter.

After hearing oral argument the trial court signed an order in which the court (1) granted Scroggins's motion for summary judgment, (2) declared that Landry's claim to Scroggins's 50% interest in the Property is invalid and void, (3) overruled Landry's affirmative defenses of res judicata and collateral estoppel; (4) ordered that the Property be partitioned and sold with the issuance of a writ of partition for the sale of the Property, (5) appointed a receiver for the sale of the Property, (6) ordered that Scroggins recover $26,000 in reasonable and necessary attorney's fees against Landry, (6) made conditional awards of reasonable and necessary appellate attorney's fees, and (7) stated with unmistakable clarity that it is a final judgment. On the same day the trial court signed an order in which the trial court (1) granted Scroggins's application to appoint a receiver, (2) appointed a receiver of the Property, (3) authorized the receiver, upon filing a $500 receiver's bond, to take control of the Property, and to do anything reasonably necessary for the proper management, operation, preservation, maintenance, and sale of the Property, and (4) ordered Landry to cooperate with the receiver's completion of receivership duties, including giving the receiver access and possession to the Property within 24 hours of the entry of the receivership order. Landry timely filed this appeal.

II. ISSUES AND ANALYSIS

In his sole appellate issue Landry asks "[w]hether a party that has already invoked remedies under Texas Property Code §23.001 *et seq. and* Texas Family Code Sec. 9.001, et. al[.] in the divorcing court, can then file a brand[-]new *third* cause of action under Texas Property Code §23.001 *et seq*[.] in a non-divorcing

court?"[1] We presume that the issue of whether the trial court erred in granting Scroggins's traditional motion for summary judgment because the summary-judgment evidence raised a genuine issue of material fact as to Landry's defenses of res judicata and collateral estoppel is a subsidiary question fairly included in Landry's sole issue. *See* Tex. R. App. 38.1(f) (providing that "[t]he statement of an issue or point will be treated as covering every subsidiary question that is fairly included"). We also presume that Landry has sufficiently briefed an argument on appeal that the trial court erred in granting Scroggins's traditional motion for summary judgment because the summary-judgment evidence raised a genuine issue of material fact on each essential element of Landry's res judicata and collateral estoppel defenses.

In a traditional motion for summary judgment, if the movant's motion and summary-judgment evidence facially establish its right to judgment as a matter of law, the burden shifts to the nonmovant to raise a genuine issue of material fact sufficient to defeat summary judgment. *M.D. Anderson Hosp. & Tumor Inst. v. Willrich*, 28 S.W.3d 22, 23 (Tex. 2000). In our de novo review of a trial court's summary judgment, we consider all the evidence in the light most favorable to the nonmovant, crediting evidence favorable to the nonmovant if reasonable jurors could and disregarding contrary evidence unless reasonable jurors could not. *Mack Trucks, Inc. v. Tamez*, 206 S.W.3d 572, 582 (Tex. 2006). The evidence raises a genuine issue of fact if reasonable and fair-minded jurors could differ in their conclusions in light of all of the summary-judgment evidence. *Goodyear Tire & Rubber Co. v. Mayes*, 236 S.W.3d 754, 755 (Tex. 2007).

[1] Emphasis in the original.

A. Did the summary-judgment evidence raise a genuine fact issue as to Landry's defenses of res judicata and collateral estoppel?

An essential element that Landry must prove to establish both res judicata and collateral estoppel is a prior final judgment on the merits by a court of competent jurisdiction. *See In re USAA General Indem. Co*., 629 S.W.3d 878, 884 (Tex. 2021) (collateral estoppel); *Bridgestone Lakes Community Improvement Assoc. v. Bridgestone Lakes Dev. Co.*, 489 S.W.3d 118, 127 (Tex. App.—Houston [14th Dist.] Mar. 29, 2016, pet. denied) (collateral estoppel) (mem. op.); *In re H.B.N.S.*, Nos. 14-05-00410-CV, 14-06-00102-CV, 2007 WL 2034913, at *9 (Tex. App.—Houston [14th Dist.] Jul. 17, 2007, pet. denied) (res judicata) (mem. op.).

1. The Divorce Decree

The Divorce Decree was a final and appealable judgment, and no party timely perfected a direct appeal from it. In the decree the court did not partition the Property or address whether it should be partitioned. Landry does not argue that the Divorce Decree is a proper basis for the application of res judicata or collateral estoppel, and any such argument would lack merit. *See Busby v. Busby*, 457 S.W.2d 551, 554–55 (Tex. 1970); *Ware v. Ware*, 809 S.W.2d 569, 571–72 (Tex. App.—San Antonio 1991, no writ).

2. The Order

Landry argues that the Order is a final judgment that bars Scroggins's claims in this case under res judicata and collateral estoppel. After the time for perfecting a direct appeal from the Divorce Decree had passed, Scroggins filed the Second Lawsuit as a separate and distinct action, and it was assigned its own cause number. Later the Second Lawsuit was consolidated with the First Case and given the First Case cause number. Even though from this point on the Second Lawsuit bore the same cause number as the Divorce Decree, the First Case had concluded with a final divorce decree, and the Second Lawsuit was a separate and distinct

lawsuit that had the First Case cause number. *See Hicks v. Rodriguez*, No. 03-08-00040-CV, 2010 WL 532394, at *3 n.1 (Tex. App.—Austin 2010, no pet.) (stating that it is standard procedure to file enforcement and modification lawsuits under the same cause number as the prior divorce decree even though each is a separate suit) (mem. op.); *Finley v. Wilkins*, No. 07-07-0448-CV, 2009 WL 1066072, at *2 (Tex. App.—Amarillo Apr. 20, 2009, no pet.) (holding that modification action filed after final divorce decree that no party appealed was a distinct lawsuit even though it was filed in the same cause number as the divorce proceedings) (mem. op.); *Eberstein v. Hunter*, 260 S.W.3d 626, 628–29 (Tex. App.—Dallas 2008, no pet.) (concluding that the 2005 enforcement action was a separate and distinct lawsuit from the 2003 enforcement action and from the prior divorce proceeding, even though all three lawsuits shared the same cause number, and therefore the 2003 action and the divorce proceeding were not relevant to the determination as to whether there was a final judgment in the 2005 action). Therefore, the consolidation of the Second Lawsuit with the First Case does not affect the analysis as to whether the Order is a final order. *See Hicks*, 2010 WL 532394, at *3 n.1; *Finley*, 2009 WL 1066072, at *2; *Eberstein*, 260 S.W.3d at 628–29.

An order issued without a conventional trial on the merits is final for purposes of appeal if it (1) actually disposes of all claims and all parties before the court or (2) states with unmistakable clarity that it is a final judgment. *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 192, 200 (Tex. 2001). Because the trial court issued the Order after a conventional trial on the merits, a different analysis applies. *See id*. at 198–99. An order rendered after a conventional trial on the merits carries a presumption of finality. *See N. E. Indep. Sch. Dist. v. Aldridge*, 400 S.W.2d 893, 897–98 (Tex. 1966); *Bacon Tomsons, Ltd. v. Chrisjo Energy, Inc*., No. 01-15-00305-CV, 2016 WL 4217254, at *9 (Tex. App.—Houston [1st

Dist.] Aug. 9, 2016, no pet.) (mem. op.). The inclusion of a "Mother Hubbard" clause—stating that all relief not expressly granted is denied—in such an order would make it clear that the order is final and appealable. *See Lehmann*, 39 S.W.3d at 192, 205. If the order does not contain a Mother Hubbard clause or a statement with unmistakable clarity that the order is a final judgment, then the presumption of finality may be rebutted by a contrary showing in the record. *See Aldridge*, 400 S.W.2d at 897–98; *In re D.J.*, No. 02-23-00294-CV, 2023 WL 6152613, at *1 (Tex. App.—Fort Worth Sep. 21, 2023, no pet.) (mem. op.); *Bacon Tomsons, Ltd.*, 2016 WL 4217254, at *9.

The Order does not contain a Mother Hubbard clause, stating that all relief not expressly granted is denied, nor does it contain a statement with unmistakable clarity that the order is a final judgment, such as a statement that the order disposes of all claims and all parties and is final and appealable. *See Lehmann*, 39 S.W.3d at 192, 205; *In re D.J.*, 2023 WL 6152613, at *1; *Bacon Tomsons, Ltd.*, 2016 WL 4217254, at *9. The Order does not address or dispose of Scroggins's pending claims for attorney's fees, expenses, and interest. *See McNally v. Guevara*, 52 S.W.3d 195, 196 (Tex. 2001) (concluding judgment in which court did not dispose of claim for attorney's fees was interlocutory); *Bacon Tomsons, Ltd.*, 2016 WL 4217254, at *9. We conclude that the presumption that the Order is final and appealable is rebutted by a contrary showing in the record and that the Order is interlocutory, not final. *See In re D.J.*, 2023 WL 6152613, at *1; *Bacon Tomsons, Ltd.*, 2016 WL 4217254, at *9. Though Landry submitted summary-judgment evidence regarding the Order, the summary-judgment evidence does not raise a genuine fact issue as to whether the Order is a final judgment that could support a defense of res judicata or collateral estoppel. *See In re USAA General Indem. Co.*, 629 S.W.3d at 884; *McNally*, 52 S.W.3d at 196; *Lehmann*, 39 S.W.3d at 192, 205; *Aldridge*, 400 S.W.2d at 897–98; *In re D.J.*, 2023 WL 6152613, at *1; *Bacon*

Tomsons, Ltd., 2016 WL 4217254, at *9; *In re H.B.N.S.*, 2007 WL 2034913, at *9.

3. An Alleged Ruling on the Petition for Enforcement

Liberally construing his appellate briefing, Landry also relies on an alleged ruling on Scroggins's Petition for Enforcement. Landry characterizes the Petition for Enforcement as seeking relief under section 9.203 of the Texas Family Code. *See* Tex. Fam. Code Ann. §9.203(a) (West, Westlaw through 2023 4th C.S.) (providing that "[i]f a court of this state failed to dispose of property subject to division in a final decree of divorce or annulment even though the court had jurisdiction over the spouses or over the property, the court shall divide the property in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage"). In the Petition for Enforcement Scroggins does not cite section 9.203 or any other part of the Texas Family Code, and Scroggins does not ask the court to divide community property that the court failed to dispose of in the Divorce Decree. *See id*. Neither the form nor the substance of the Petition for Enforcement is a request for relief under section 9.203 of the Texas Family Code. Instead in the Petition for Enforcement Scroggins asked the court to hold Landry in contempt of court for his failure to comply with the Order.

The summary-judgment evidence includes a copy of the docket sheet from the First Case cause number. The docket sheet reflects that the Petition for Enforcement was heard on January 6, 2023, and contains the notation, "Respondent's Motion for Judgment granted. Order will be filed." The docket sheet reflects that a proposed order was filed on January 9, 2023, and that on January 19, 2023, the court did not sign the proposed order and asked Landry to amend language in the order. The docket sheet does not reflect that another proposed order was submitted or that the trial court ever signed an order or

judgment ruling on the Petition for Enforcement. The record does not contain an order or judgment of the court ruling on the Petition for Enforcement.

Subject to a statutory exception, a docket entry, even one bearing the court's initials, cannot constitute an order or judgment of the court. *See In re G.X.H., Jr.*, 627 S.W.3d 288, 297–98 (Tex. 2021); *Kastner v. Gutter Management, Inc.*, No. 14-09-00055-CV, 2010 WL 4457461, at *10 (Tex. App.—Houston [14th Dist.] Nov. 4, 2010, pet. denied) (mem. op.); *Grant v. Am. Nat'l Ins. Co.*, 808 S.W.2d 181, 181–84 (Tex. App.—Houston [14th Dist.] 1991, no writ). The cases to which Family Code section 101.026 applies fall within this statutory exception, and in those cases the trial court may pronounce its ruling on a matter in the court's docket sheet. *See* Tex. Fam. Code Ann. § 101.026 (West, Westlaw through 2023 4th C.S.) (providing that "'render' means the pronouncement by a judge of the court's ruling on a matter" and that "[t]he pronouncement may be made . . . in writing, including on the court's docket sheet"). Family Code section 101.026 applies only to suits affecting the parent-child relationship. *See* Tex. Fam. Code Ann. § 101.001(a) (West, Westlaw through 2023 4th C.S.); *In re G.X.H., Jr.*, 627 S.W.3d at 297–98. Though they were consolidated into or filed in the First Case cause number, the Second Lawsuit and the Petition for Enforcement were each a separate and distinct lawsuit. *See Hicks*, 2010 WL 532394, at *3 n.1; *Finley*, 2009 WL 1066072, at *2; *Eberstein*, 260 S.W.3d at 628–29. In neither suit did a party request the appointment of a managing conservator or a possessory conservator, access to or support of a child, or establishment or termination of the parent-child relationship. Therefore, nether the Second Lawsuit nor the Petition for Enforcement is a suit affecting the parent-child relationship, and the statutory exception of Family Code section 101.026 does not apply. *See* Tex. Fam. Code Ann. § 101.032 (West, Westlaw through 2023 4th C.S.) (providing that "'Suit

affecting the parent-child relationship' means a suit filed as provided by [title 5 of the Family Code] in which the appointment of a managing conservator or a possessory conservator, access to or support of a child, or establishment or termination of the parent-child relationship is requested"). The statements in the docket sheet do not constitute an order or judgment ruling on the Petition for Enforcement. *See In re G.X.H., Jr.*, 627 S.W.3d at 297–98; *Kastner*, 2010 WL 4457461, at *10; *Grant*, 808 S.W.2d at 181–84. If the court had issued an order or a judgment ruling on the Petition for Enforcement, Landry could easily have submitted the order or judgment as part of the summary-judgment evidence, but he did not do so.

Presuming, without deciding, that a ruling on a petition to enforce an interlocutory order may constitute a final judgment that is the basis for res judicata or collateral estoppel, the summary-judgment evidence does not raise a genuine fact issue as to whether the court issued a final judgment ruling on the Petition for Enforcement that could support a defense of res judicata or collateral estoppel. *See In re USAA General Indem. Co.*, 629 S.W.3d at 884; *In re G.X.H., Jr.*, 627 S.W.3d at 297–98; *Kastner*, 2010 WL 4457461, at *10; *In re H.B.N.S.*, 2007 WL 2034913, at *9; *Grant*, 808 S.W.2d at 181–84.

4. Conclusion

The summary-judgment evidence does not raise a genuine issue of material fact as to whether a final judgment exists that could support a defense of res judicata or collateral estoppel. *See In re USAA General Indem. Co.*, 629 S.W.3d at 884; *In re G.X.H., Jr.*, 627 S.W.3d at 297–98; *McNally*, 52 S.W.3d at 196; *Lehmann*, 39 S.W.3d at 192, 205; *Bacon Tomsons, Ltd.*, 2016 WL 4217254, at *9; *Kastner*, 2010 WL 4457461, at *10; *In re H.B.N.S.*, 2007 WL 2034913, at *9.

B. Did Landry sufficiently brief any other challenges to the trial court's judgment?

In his opening brief Landry states in a conclusory manner that the trial court erred in granting Scroggins's summary judgment motion and in dismissing Landry's defenses based on the one-judgment rule, laches and waiver. Landry also asserts that a former spouse may not pursue remedies under both chapter 9 of the Texas Family Code and chapter 23 of the Texas Property Code. *See* Tex. Fam. Code Ann. § 9.001, *et seq*.; Tex. Prop. Code Ann. §23.001, *et seq*. In his opening brief, Landry does not provide any argument, analysis, or citations to the record or legal authority in support of any of these propositions. Even construing Landry's opening brief liberally, we cannot conclude that Landry adequately briefed an argument challenging the trial court's judgment based on any of these propositions or any proposition other than alleged fact issues as to res judicata and collateral estoppel. *See Marathon Petroleum Co. v. Cherry Moving Co.*, 550 S.W.3d 791, 798 (Tex. App.—Houston [14th Dist.] 2018, no pet.). Thus, we find briefing waiver as to any challenge to the trial court's judgment not based on res judicata or collateral estoppel.

III. CONCLUSION

An essential element that Landry must prove to establish both res judicata and collateral estoppel is a prior final judgment. Though the Divorce Decree is a prior final judgment, it is not a proper basis for the application of res judicata or collateral estoppel. The summary-judgment evidence does not raise a genuine fact issue as to (1) whether the Order is a final judgment that could support res judicata or collateral estoppel, or (2) whether the court issued a final judgment ruling on the Petition for Enforcement that could support res judicata or collateral estoppel. Even construing Landry's opening brief liberally, we cannot conclude that Landry adequately briefed an argument challenging the trial court's judgment based on any

proposition other than alleged fact issues as to res judicata and collateral estoppel. Landry has not adequately briefed any argument showing that the trial court erred. Therefore, we overrule Landry's sole issue and affirm the trial court's judgment.

/s/ Randy Wilson
Justice

Panel consists of Justices Wise, Wilson, and Antu.